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## **Article for Copyright World**

### ***Restrictions lifted on parallel importation of software; enforcement provisions strengthened***

Virginia Morrison, Australian Copyright Council, 7 April 2003

#### **Parallel importation of software**

Parallel importation of software into Australia is now permitted under changes to the Copyright Act 1968 that were passed by Federal Parliament on 27 March 2003.

The Copyright Amendment (Parallel Importation) Act 2003 removes a copyright owner's right to prevent the commercial importation and distribution of legitimate computer programs and computer games. The Act also allows the importation of "enhanced CDs" which are sound recordings that include other copyright material such as video clips. The Government claims that some Australian rights holders are preventing the importation of sound recordings, for which parallel importation restrictions were lifted in 1998, by relying on the secondary material included with the recording. The new provisions do not apply to feature films made for public exhibition, broadcast or sale or rental to the public.

Where a defendant relies on a parallel importation provision to import software or other material, that person has the onus of proving the legitimacy of the material.

These amendments are the culmination of much debate. The Government's longstanding position is that parallel importation restrictions have been used by copyright owners to restrict competition, and to charge Australian consumers more than overseas consumers for software and other copyright material. This position is supported by research done by the Australian Competition and Consumer Commission, but is disputed by copyright owners.

Books, periodicals and sheet music were originally targeted by the Government for inclusion in the current legislation, but the publishing industry was granted a reprieve in a deal done between the Government and the Australian Democrats (one of the minor parties in the upper house). However, the lifting of the restrictions does apply to "copies of electronic literary or music items", presumably including digital text and sheet music.

#### **Enforcement of copyright**

In addition to lifting the parallel importation provisions, the Act implements a number of measures to improve enforcement of copyright law. The enforcement amendments implement several of the recommendations made by the Federal

House of Representatives Standing Committee on Legal and Constitutional Affairs in its 2000 report, *Cracking down on copycats: enforcement of copyright in Australia*.

The amendments include:

- an increase in the penalties for commercial importation of infringing copyright material by \$55,000 for corporations (to a maximum of \$357,000 per offence) and by \$11,000 for individuals (to a maximum of \$71,500 per offence);
- the ability to draw presumptions supporting proof of subsistence and ownership of copyright from various sources, including labels and marks, information in foreign certificates of registration and through citation of each of the owners and transactions in the relevant chain of title;
- giving the Federal Magistrates Court jurisdiction in various civil copyright matters, providing copyright owners with access to a quick and relatively cheap forum for resolving less complex copyright matters; and
- encouraging courts to consider awarding additional damages in the case of serious civil infringements, taking into account factors including deterrence of similar infringements, and the defendant's conduct following his or her becoming aware of the alleged infringement.

The Act will come into effect when it receives Royal Assent, which is due to occur shortly. The legislation and supporting material can be accessed at the Australian Parliament's website at [www.aph.gov.au](http://www.aph.gov.au).